

Protest of)	Date: May 6, 1992
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CONTINENTAL RESOURCES, INC.)	
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Solicitation No. 419990-92-A-0101)	P.S. Protest No. 92-19

DECISION

Continental Resources, Inc. (Continental) protests the award of a contract for 155 "notebook" computers, with accessories, to Zenith Data Systems. Continental alleges that, as properly evaluated, its proposal was the lowest cost, technically acceptable proposal.

Solicitation No. 419990-92-A-0101 was issued on March 12, 1992, as a simplified purchase pursuant to Procurement Manual (PM) 4.2, with offers due on March 16.^{1/} Section 1.1, Items and Prices, provided, in part, as follows:

OFFERORS MUST SUBMIT UNIT PRICE AND TOTAL PRICE FOR THIS PURCHASE WITH THE MAKE, WARRANTY, AND MODEL OF THE COMPUTER THEY WILL PROVIDE. . . . A SEPARATE PRICE BREAKDOWN OF THE COMPONENT PARTS MAY BE PROVIDED BY THE OFFEROR.

^{1/} The solicitation explained that the short time frame for proposal submission was necessitated by the required delivery date of April 14.

(Emphasis added). Attachment I set forth the eighteen required features and components of the computers. The solicitation also provided a place in Section 1.1 for the offeror to write in its unit price and extended price. In accordance with Section 3.1 of the solicitation, award was to be made to the responsible offeror whose offer was the lowest priced and conformed to the requirements of the solicitation.

Fifteen offers were received. Continental, which proposed on an AST Model Premium Exec. 386 Sx/25 computer and Cannon BJ-10ex printer, provided a price breakdown of its proposal. The computer it proposed, which apparently met most of the required features, was set at an item price of \$1,898.00. Four components were separately priced: the 2400-baud modem at \$115.00; the nylon carrying case at \$27.00; the portable printer at \$328.00 and the printer battery at \$36.00. In addition, the proposal contained the following handwritten annotation at the bottom of the component list.

19) FREIGHT

\$1085.00

UNIT = \$3489.00

Section 1.1 of Continental's proposal set forth a unit price of \$3,489.00 and an extended price of \$540,795.00.^{1/} Continental was thirteenth low of the fifteen offers received. After the lowest priced offer was rejected as technically unacceptable, , award was made to Zenith Data Systems on March 27, 1992 at a price of \$429,350.00.

^{2/} Both of these pages also included the signature of the sales representative who submitted the proposal at the bottom of the page.

After receipt of the award notice, Continental wrote to the contracting officer on March 30, explaining that its offer contained a mistake, namely, the unit price was \$1,077.00 too high, as it had added the total freight cost (i.e., \$1,085.00) to the unit price rather than the unit freight price of \$7.00. Although Continental realized that award had already been made to Zenith, it hoped that this error in calculation could be resolved, noting that, with a unit freight cost of \$7.00, it had the lowest unit price of all offerors.

On April 1, the contracting officer responded to Continental. She noted that Continental had clearly entered \$1,085.00 as the unit freight cost on the cost breakdown and had transferred the unit cost, as computed, to the appropriate section of the solicitation. She stated that "[i]n examining your original proposal there was no indication that a mistake had been made and there was no reason to question the unit price or total price of your offer," and denied the relief sought by Continental. Continental's timely protest to our office followed.

In its protest, Continental emphasizes its assertion that the substitution of its total freight cost of \$1,085.00 in place of the correct, per unit freight cost of \$7.00 was a "glaring error." It attributes this error to the extremely short time its sales representative had to submit its proposal. Continental notes that the Postal Service will needlessly spend \$54,095.00 because of Continental's mistake and asserts that it remains ready to perform the contract in accordance with its terms and conditions. It requests award of the contract at the corrected price of \$373,705.00, or, alternatively, cancellation of the award to Zenith and a round of best and final offers from all offerors.

In her report to our office, the contracting officer basically reiterates the points made in her letter of April 1. She notes that there was no reason to suspect the existence of a mistake in Continental's proposal, based on the accuracy of the calculation set forth therein. She also states that eight other offers were received on the same computer type as that proposed by Continental, and that Continental's allegedly mistaken unit price of \$3,489.00 was not out of line with the range of offers (\$2,944.22 through \$3,247.00) proposed by other offerors on that type of computer.

In rebuttal comments, Continental alleges that its error could have been fixed immediately after award was announced to Zenith without harm to it or the Postal Service and in keeping with the tight delivery schedule. It states that the huge magnitude of the error should have been caught by the contracting officer when she reviewed its proposal. It cannot comprehend how such an error, the correction of which would save the Postal Service almost 55,000, would not have been noticed and why the Postal Service abstinently refused, even after it received notice of the mistake, to correct the error.

Mistakes in proposals \$ are covered by Procurement Manual (PM) 4.1.3 f., which provides as follows:

Contracting officers must examine proposals for mistakes. Communication with an offeror concerning mistakes is clarification, not discussion. However, if correction of a mistake requires reference to documents, worksheets, or other data outside the solicitation to establish the existence of the mistake or the intended proposal, the mistake may be corrected only through discussions. See

4.1.5.f.5 concerning mistakes in contracts awarded without discussions.

Continental's protest can be distilled to a single issue: whether the contracting officer should have suspected that its proposal contained an error after her review of the proposal. The standard by which we review such an allegation is one of reasonableness, whether under the facts and circumstances involved in a given case there were any factors which reasonably could have raised the presumption of error in the mind of the contracting officer. See Wender Presses, Inc. v. United States, 343 F.2d 961, 963 (Ct. Cl. 1965). It is the offeror's obligation to review the solicitation carefully before submitting its proposal. See Quillen & Associates, Inc., Comp. Gen. Dec. B-208021, July 30, 1982, 82-2 BCA & 98 (advertised solicitation).

On the specific facts of this case, we cannot find that the contracting officer should have suspected a mistake in Continental's offer. The cost breakdown on its proposal was correctly added, the sum of the additions was used as the unit price in the proposal, and that unit price was correctly extended to the total price. All indications on the face of the proposal, such as the handwritten addition of the separate freight charge and the signature of the sales representative on the pages of the proposal reinforced the conclusion that no mistake had been made in the offer. Therefore, there were no apparent errors in the proposal to indicate a mistake had been made.

Continental's offer was also in line with the other proposals received on this solicitation.

Two offerors proposed prices higher than Continental's and its price was close to the other offerors who had proposed the same type of computer as Continental offered.

Continental's sole argument is that the per unit freight cost of \$1,085.00 is, of itself, so

unreasonably high for a seven-pound computer unit that the contracting officer should have noticed it and called the error to Continental's attention. We are hesitant to require the contracting officer to exalt her perception of a proposal over the clear, unambiguous language contained in the proposal in the absence of evidence conclusively proving that the mistake was extremely obvious. Indeed, in a situation such as that presented here, where an F.O.B. Destination delivery of the entire contract quantity was necessary with 2-4 weeks after award, it is very likely that the delivery costs would be higher than normal. Based on the facts of this case, the contracting officer's failure to notice that a mistake had been made in Continental's proposal was reasonable.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law